



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF985

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Coast Boulevard Improvements Project, La Jolla, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of incidental harassment authorization (IHA).

SUMMARY: NMFS has received a request from the City of San Diego (the City) for an incidental harassment authorization (IHA) to take three species of marine mammals, by Level B harassment only, incidental to Coast Boulevard improvements in La Jolla, California. The project has been delayed, such that none of the work covered in the identical IHA issued in 2017 was initiated and, therefore, the City requested that an identical IHA be issued to cover the same work in 2018. NMFS is, therefore, issuing a second IHA to cover the incidental take analyzed and authorized in the initial IHA. The scope of the activities and anticipated effects remain the same, authorized take numbers would not change, and the required mitigation, monitoring, and reporting would remain the same as authorized in the 2017 IHA referenced above. NMFS is therefore notifying the public about the issuance of an IHA to the City to incidentally take marine mammals, by Level B harassment only, during the City's Coast Boulevard improvements.

DATES: Valid June 1, 2018 through May 31, 2019.

ADDRESSES: An electronic copy of the final 2017 IHA previously issued to the City, the City's application, and the *Federal Register* notices proposing and issuing the 2017 IHA may be obtained by visiting <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed below (see FOR FURTHER INFORMATION CONTACT).

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. §§ 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

History of Request

NMFS received a request from the City for authorization to take marine mammals incidental to Coast Boulevard improvements in La Jolla, California on December 16, 2016. On March 1, 2017, we deemed the City's application for authorization to be adequate and complete. We published a notice of a proposed IHA and request for comments on April 26, 2017 (82 FR 19221), and subsequently issued an IHA to the City on May 31, 2017, and published final notice of our issuance of the IHA on June 29, 2017 (82 FR 29511).

On October 19, 2017, the City informed NMFS that while some structural integrity testing of the existing concrete at the project location had occurred over 4 days in July, none of the work identified in the IHA that was expected to result in the take of marine mammals (i.e., construction or demolition work) had occurred and no take of any marine mammals had occurred.

On January 4, 2018, the City submitted a formal request for a new identical IHA that would be effective from June 1, 2018 through December 14, 2018, in order to conduct the construction and demolition work that was analyzed and authorized through the previously issued IHA.

The planned activities are the same as those proposed in the previous IHA application and the potential incidental take the same as that authorized through the previously issued IHA, and include improvements to an existing public parking lot, sidewalk, and landscaping areas located on the bluff tops above Children's Pool, a public beach located in La Jolla, California. Species that are expected to be taken by the planned activity include harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), and northern elephant seal (*Mirounga angustirostris*). The City's request was for harassment only and NMFS concurs that mortality is not expected to result from this activity. Therefore, an IHA is appropriate.

Description of Proposed Activity and Anticipated Impacts

The 2017 IHA covered improvements to an existing public parking lot, sidewalk, and landscaping areas located on the bluff tops above Children's Pool to upgrade public access and safety. Planned demolition activities included the removal of existing parking lot paving; concrete curb, gutter, and sidewalk; and the removal of existing irrigation and plant materials. Planned construction activities included subgrade preparation, asphalt paving, and marking of parking stalls; pouring of concrete curb, gutter, and sidewalk; construction of rock walls, installation of fencing, placement of landscape boulders, installation of landscaping and irrigation; and finishing and clean up. The 2017 IHA authorized the Level B harassment of 1,620 harbor seals, 36 California sea lions and 14 northern elephant seals. The City did not conduct any demolition or construction activities, and no takes of marine mammals occurred, and now requests that this second IHA cover all demolition and construction activities as those proposed in the 2017 IHA application and authorized via the 2017 IHA.

We refer to the documents related to the previously issued IHA, which include the Federal Register notice of the issuance of the 2017 IHA for the City's construction and demolition work (82 FR 29511), the City's application, the Federal Register notice of the proposed IHA (82 FR 19221), and all associated references and documents.

Detailed Description of the Action—A detailed description of the proposed demolition and construction activities is found in these previous documents. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices.

Description of Marine Mammals—A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to this IHA as well.

In addition, NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the current IHA. Since issuing the 2017 IHA, NMFS published draft Stock Assessment Reports (SARs) (82 FR 60181; 19 December 2017). The abundance estimates reported in the draft SARs did not change for any of three species proposed to be taken in this authorization.

Potential Effects on Marine Mammals—A description of the potential effects of the specified activities on marine mammals and their habitat is found in these previous documents, which remains applicable to this IHA. There is no new information on potential effects.

Estimated Take—A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in these previous documents. The methods of estimating take are identical to those used in the previous IHA, as is the density of marine mammals. The number of takes authorized is the same as the number of takes authorized via the previous IHA. Level A incidental take is not expected to occur for the same reasons discussed in the previous documents and none is authorized.

Description of Mitigation, Monitoring and Reporting Measures—A description of mitigation, monitoring, and reporting measures is found in the previous documents, which are identical in this IHA. In summary, mitigation will include limiting construction to outside of the harbor seal pupping season (December 15 to May 15), limiting construction to daylight hours only, using the loudest equipment only between 8:30 a.m. and 3:30 p.m., and monitoring both airborne noise and marine mammals. One trained protected species observer will monitor the proposed activities to collect information of responses of marine mammals to the activities.

On October 19, 2017, the City submitted a monitoring report for the minimal work that had been completed on the existing concrete under the 2017 IHA (work that was not expected to result in take of marine mammals, but which was part of the overarching activity). The City complied with all mitigation, monitoring, and reporting protocols. No marine mammal takes were expected, authorized, or recorded. The monitoring report can be viewed on NMFS's website: www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.

Determinations

The City will conduct activities identical to those analyzed in the previous 2017 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the 2017 IHA. This 2018 IHA includes identical required mitigation, monitoring, and reporting measures as the 2017 IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) the City's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. § 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

However, no incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to the City of San Diego for Coast Boulevard improvements in La Jolla, CA from June 1, 2018 through May 31, 2019. All previously described mitigation, monitoring, and reporting requirements from the 2017-2018 IHA are incorporated.

Dated: May 25, 2018.

Donna S. Wieting,

Director,

Office of Protected Resources,

National Marine Fisheries Service.

[FR Doc. 2018-11785 Filed: 5/31/2018 8:45 am; Publication Date: 6/1/2018]